

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Elijah Shapira and Victor Lu

Serial No. 09/707,541 Examiner: Timothy M. Harbeck

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Title: METHOD AND APPARATUS FOR REAL-TIME REPORTING OF
ELECTRONIC COMMERCE ACTIVITY

Confirmation No. 1290

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REPLY BRIEF
UNDER 37 C.F.R. § 41.41**

This Reply Brief is responsive to the Answer filed by the USPTO on July 26, 2007 in the Appeal for the above-identified patent application for REAL-TIME REPORTING OF ELECTRONIC COMMERCE ACTIVITY. The remarks below are directed primarily to the “Editors” reference which is a press release by WebSideStory, Inc. concerning their new StatMarket eData Mining Tool. In short, the press release and the tool itself does not teach tracking the type of commercial data indicated within the patent application and defined by the claims—thus, and because elements of the claims are missing in the prior art, rejection of the claims under Section 103(a) would be inappropriate as a matter of law.

The Examiner has stated that the following two steps of claim 1 are taught by the Editors reference:

- (a) uploading the web page including the data fields and data mining code to a visitor computer responsive to a request over the wide area network from the visitor computer; and
- (b) operating the data mining code on the visitor computer to obtain technical and commercial data;

The terms “technical” and “commercial” data is given special meaning within the patent application that differs from that in the Editors reference. In the present invention, the following definitions are given in exemplary form:

- Technical Data: “such as most popular pages, referring URLs, total number of visitors, returning visitors, etc.” (Application, page 1, lines 32-33)

The data mined from the visitor computer by the data mining code is attached as a code string to the end of the image request sent to the server 20. By setting the source of the image to a variable built by the script (e.g. www.webtrends.live.com/button3.asp?id39786c45629t120145), all the gathered information can be passed to the web server doing the logging. In this case, for instance, the variable script “id39786c45629t120145” is sent to the webtrends.live.com web site and is interpreted by a decoder program built into the data analysis server to mean that a user with ID#39786, loaded client web site #45629 in 4.5 seconds and spent 1:20 minutes there before moving to another web site.

[Application, page 4, lines 9-16]

- Commercial Data: “e.g., number of orders, total revenues, etc” (Application, page 4, line 18)

An example of this process is described as follows. The variable image source constructed by the inserted commercial activity tracking script can be shown as, for instance, www.webtrends.live.com/button3.asp?usd-lawn_chair#1-1445-002-2499, corresponding to price in U.S. dollars, product name: “lawn chair #1”, product category #1445, 2 units sold at a per unit price of \$24.99. Decoder software operable within server 22 reverse engineers the order to extract commercial activity data based on the source of the image requests.

[Application, page 5, lines 16-21]

The “E-commerce data” referred to in the Editors reference is strictly of the Technical Data type referred to in the present patent application. Editors goes on at length about the type of information that may be obtained with the StatMarket product, but none of this extensive list includes such Commercial Data items as number of orders, total revenues, price, units sold, etc. Therefore, Editors does not add anything beyond what is described in Appellants’ Background of the Invention section.

From Editors:

- “The service gives executives at business sites precise, but anonymous, information about visitors, including where they came from, what they view, how long they stay, and soon, even other places they frequent on the Web.” [Editors, page 2]
- “Through a patent-pending path tracking technology, eData Mining tracks precise navigation course taken through a site, from point of entry, through course of interaction, to the time and place of exit. Executives can track unique visitors by day and month, impressions, browsers, plug-ins, screen colors, monitor resolution and more than 500 other variables that affect how well an e-commerce site can do business.” [Editors, page 2]

It is clear that all of the data gathered by the eData Mining tool of StatMarket falls into the “Technical Data” category defined within the present application.

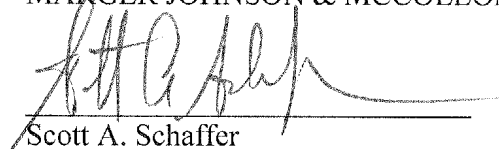
Nowhere within the press release is it shown that commercial data such as total number of orders and revenue from a site can be tracked based on inputs into order fields by a visitor. Accordingly, one knowledgeable in the art would not be able to use the simple teachings of the WebSideStory press release (e.g. Editors) to construct a system capable of creating data mining code capable of obtaining both technical data and commercial data.

The ability to track commerce transaction activity by using consumer entries in into the data fields of web pages (e.g. order web pages) uploaded to a visitor computer is being trivialized by the Examiner's bare assumption that mining commercial data from a visitor computer is suggested by the Papierniak reference. Papierniak is a server-side commerce analysis tool. The Editors reference itself teaches away from such a combination:

- This industry-first resource for Web site and e-commerce traffic analysis leads a broad industry shift from complicated and often inaccurate software-based log file analysis to Web-based visitor profiling. [Editors, page 1]
- Most Web traffic analysis and data mining solutions require extensive hardware and software purchases and maintenance - often at great cost. [Editors, page 2]
- Log file reports are complicated, time-consuming, and unreliable. Too often, they actually misinform strategic planners by counting false page views from robots or spiders. They can miss page views altogether, such as views at the huge proxy mirrors maintained by AOL and other large services. [Editors, page 2]

As Editors fails to teach elements missing from the remaining references in the case, the rejection of the claims under Section 103(a) must be withdrawn.

Respectfully submitted,
MARGER JOHNSON & MCCOLLOM, P.C.



Scott A. Schaffer
Reg. No. 38,610

MARGER JOHNSON & McCOLLOM, P.C.
210 SW Morrison Street, Suite 400
Portland, Oregon 97204
(503) 222-3613